

EXHIBIT E

David Ciavarella, M.D.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, EAST COUNTY REGIONAL CENTER

- - -

MARY GIORDANO, individually :
and on Behalf of the Estate :
of Jacqueline Keith and :
other qualified survivors, :
Plaintiffs, :
vs. : Case No. 37-2011-
: 00069363-CU-PO-EC
:
C.R. BARD, INC., a :
corporation, BARD PERIPHERAL :
VASCULAR INC., a corporation, :
THOMAS BRANNIGAN, M.D., an :
individual, FRANKLIN KALMAR, :
M.D., an individual, JULIE :
LAIDIG, M.D., an individual, :
SHARP GROSSMONT HOSPITAL, a :
corporation, SHARP :
HEALTHCARE, a corporation, :
and DOES 1 through 100 :
inclusive, :
Defendants. :
- - -

Tuesday, November 12, 2013

- - -

Videotaped Deposition of DAVID
CIAVARELLA, M.D., held at Short Hills Hilton, 41
John F. Kennedy Parkway, Short Hills, New
Jersey, on the above date, beginning at 9:43 a.m.,
before Kimberly A. Overwise, a Certified
Realtime Reporter and Notary Public.

- - -

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1 Ciavarella 26 Spreadsheet, Bates Nos. 166
2 BPVE-01-01631586-606 and
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4 Ciavarella 27 Chart, Bates No. 176
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5 Ciavarella 28 PowerPoint presentation 182
entitled "Filters

7 Complaint History, Data
as of 7/31/07," Bates No.
BPV-17-01-00180239

8 Ciavarella 29 Document entitled "NMT 189
Medical, Inc., R&D
Technical Report," 9/1/00,
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00054540-546

12 Ciavarella 30 Memorandum, 4/19/05, to 210
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14 Ciavarella 31 Memorandum, 8/3/05, to 210
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21 Ciavarella 34 Memo, 12/15/04, to 285
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6	Ciavarella 40	Document entitled "Health Hazard Evaluation," 2/15/06, Bates Nos. BPVEFILTER- 01-00008355-357	364
7	Ciavarella 41	PowerPoint presentation entitled "Bard Peripheral Vascular Filter Franchise Review," May 6, 2008, Bates Nos. BPVE-01- 00622862-900	371
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1 important for a doctor to know about as to
2 whether or not he's going to choose to use
3 my product or not use my product, I've got
4 to put the information out there and let
5 the doctor make the decision?")

6 BY MR. LOPEZ:

7 Q Am I right about that?

8 A Well, yes, the company needs to put
9 the information out there in a way that it is
10 relevant, understandable, not confusing to a
11 physician about its product.

12 Q And information that you know could
13 influence a physician to either use or not use
14 the product for safety reasons, you have got to
15 do that?

16 MS. DALY: Object to the form.

17 BY MR. LOPEZ:

18 Q There is no higher duty that a device
19 company has than to make sure the doctor has all
20 the information he needs to decide whether or
21 not he's going to put his patient at risk of
22 this treatment, this device, or maybe he would
23 choose something else?

24 A Yes.

25 MS. DALY: Object to the form.

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1 A Yeah.

2 Q And, by the way, one of the problems
3 with MAUDE -- forget MAUDE. One of the problems
4 with information that's being relayed from the
5 clinicians that are putting products in is that
6 the number you're getting is probably
7 significant lower than what's actually
8 happening; isn't that right?

9 A Could be, yeah, could be.

10 Q I mean, that's a general consensus
11 among -- at FDA, with pharmaceutical companies,
12 medical device companies, and I think you even
13 said so yourself in a document that sometimes
14 you're only getting 1 to 5 percent of what's
15 actually happening?

16 A Yeah, it's very hard to tell. You get
17 underreporting. You get reporting of unrelated
18 things. You get incomplete information.

19 Q Yeah, but --

20 A It's very variable.

21 Q But if you're looking at a device and
22 you're looking at this information that's coming
23 in, you have to wonder, as you're looking at
24 this information coming in, you know, there's
25 been three deaths with the Recovery filter.

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1 BY MR. LOPEZ:

2 Q Would it be reasonable for a doctor
3 who's considering using a Recovery filter in
4 2005 to want to know whether or not that device
5 had a higher failure rate than other devices?

6 MS. DALY: Same objections.

7 THE WITNESS: Yes.

8 BY MR. LOPEZ:

9 Q Would you also agree that he couldn't
10 do a proper analysis without knowing all of the
11 risks, not only the type of risk but the
12 frequency of risk?

13 MS. DALY: Same objections.

14 THE WITNESS: Well, if he --

15 sure, if he didn't have the information.

16 BY MR. LOPEZ:

17 Q Okay. Now, let's look at these and
18 compare 30 -- 30 and 31. We already talked
19 about some of this. Now, let's go down -- let's
20 look at the numbers again. So -- by the way,
21 over that six-month period of time, 6,000 more
22 units sold? I'm sorry. Actually, over a
23 four-month period of time another 6,000 units
24 sold. 27,000 as of 4/15, 33,000 as of 8/2,
25 actually less than four months.

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CERTIFICATE

2

3 I HEREBY CERTIFY that the witness
4 was duly sworn by me and that the deposition is
5 a true record of the testimony given by the
6 witness.

7 It was requested before
8 completion of the deposition that the witness,
9 DAVID CIAVARELLA, M.D., have the opportunity to
10 read and sign the deposition transcript.

11

12

13

KIMBERLY A. OVERWISE

14 Certified Realtime Reporter

Notary Public

15 Dated: November 26, 2013

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18 (The foregoing certification of
19 this transcript does not apply to any
20 reproduction of the same by any means, unless
21 under the direct control and/or supervision of
22 the certifying reporter.)

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